

INDIANA HAZARDOUS WASTE FACILITY SITING PROVISIONS

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Relevant Statutes and Regulations:

- G *Indiana Code, Title 13, Environment*, effective July 1, 1996
- G Indiana Environmental Rules: Waste, Indiana Department of Environmental Management, updated through December 1, 1996
- G *Code of Federal Regulations* (CFR), revised July 1, 1998
- G <http://www.state.in.us/idem/lawregs.html> contains the laws and regulations

Other Relevant State Documents:

- G None.

State Agency Web Address

- G <http://www.state.in.us/idem/>

Indiana Hazardous Waste Facility Siting Provisions

Affected Facilities:

- G New hazardous waste disposal facilities that received approval from the commissioner of the department of environmental management after May 5, 1981. (323 IAC 1-1-1)
- G New commercial hazardous waste facilities that received approval from the commissioner of the department of environmental management after May 5, 1981. (323 IAC 1-1-1)

Definitions of Facility Types:

- G Indiana incorporates the federal definition for “disposal facility” by reference. (329 IAC 3.1-4-1)
- G Indiana does not appear to have a definition for “commercial hazardous waste facilities”. Since no specific definition was found, it is assumed that the standard meaning of the term (i.e., facilities which accept hazardous waste for fees) applies.

Note: Since December 1, 1996 the legislature has abolished the Hazardous Waste Facility Site Approval Authority and no longer requires a certificate of environmental compatibility for siting a new hazardous waste disposal facility. The legislation contains a requirement for approval by the local zoning authority, or highest elected official in a county which does not have a zoning authority, to be submitted with a permit application to the department. Since official printed versions of the new statutes and regulations are not available at this time, this analysis is done based on the currently available regulations and statutes.

Indiana Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
ADMINISTRATION			
STATE ADMINISTERING AGENCY			
Department of Environmental Management (Department)	PPA PA PDP	<i>[13-13-1-1]</i>	<p>The Department of Environmental Management and its commissioner are involved in the siting process only as the agency responsible for issuing permits. The Department provides notification, review, and decisions regarding hazardous waste facility permits that are consistent with current federal provisions.</p> <p>An additional provision exists allowing the applicant for a permit to submit a draft permit if no decision has been made on an application within 365 days. The commissioner must approve or deny this draft permit within 25 days if no public comment or hearing are required, or within 55 days if public comment and a hearing are required.</p> <p>Appeals of decisions are made to the solid waste management board.</p>
Solid Waste Management Board (the Board)	PPA PA PDP	<i>[13-19-2]</i>	The solid waste management board is an independent board, consisting of 13 appointed and ex officio members. The Board has the responsibility to establish the requirements for the issuance of permits to construct hazardous waste facilities, and to review orders and determinations made by the commissioner of the department of environmental management.
APPLICANT			
Applicant -- responsibilities	PA	<i>[13-22-10-12]</i> 329 IAC 3.1-13-3-(f)	The applicant is responsible for obtaining both a permit (from the department of environmental management) and a certificate of environmental compatibility (from the hazardous waste facility site approval authority) before beginning construction of a new hazardous waste management facility. The certificate of environmental compatibility may be obtained at anytime during the permitting process.
THE INTERAGENCY COORDINATING COUNCIL			
No provisions found.			

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Topic	Stage ¹	State citation ²	Provision
Certificate of environmental compatibility -- information requirements	PPA PA PDP	[13-22-10-12(d)]	<p>The application for a certificate of environmental compatibility must include an environmental assessment to include, at a minimum:</p> <ul style="list-style-type: none"> C a determination of the existing hydrogeological characteristics specified in a hydrogeological report; C a monitoring program consistent with the board rules on ground water quality standards; and C an environmental assessment, including an evaluation of the proposed facility's impact on the air, water, and other natural resources of the State, and an environmental failure mode assessment.
		323 IAC 1-2-2(a)	<p>In order to properly review and evaluate the environmental and social impact of the proposed facility, each application also includes a copy of the construction approval application and approval, and a copy of any record of hearing held in conjunction with the construction approval.</p> <p>Additional information is provided regarding:</p> <ul style="list-style-type: none"> C population density adjacent to the hazardous waste transport route; C proximity of site to incompatible structures and utility lines; C risk of earthquakes; C prior mineral development at site; C impact on endangered or threatened species; C condition of roads and bridges used as transport routes; C availability of personnel and equipment in the locality to provide emergency response services; C a determination of the presence of prime agriculture land; C the need for such a facility in the state, and consideration of alternate technologies that may reduce the degree of hazard of the wastes; and C maps indicating the location of the proposed facility, and a copy of the recorded deed showing the current title holder for all property on which the facility will be located.
		[13-22-10-20(a)]	<p>The authority may mitigate specific concerns and objections to the facility by attaching conditions and limitations to the certificate of environmental comparability.</p>

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LOCAL COMMUNITY NEEDS AND INVOLVEMENT			
LOCAL REVIEW/INVOLVEMENT			
Executives of county and municipality -- certificate of environmental compatibility	PPA PA PDP	[13-22-10-15]	<p>Within 45 days of the notification from the director that an application for a certificate of environmental compatibility is complete, the county and municipality executives select and appoint their respective representative to be members of the hazardous waste facility siting approval authority. Failure to appoint the representatives within 45 days does not prohibit the authority from meeting to consider an application for a certificate of environmental compatibility, and does not prohibit the executive from making any further appointments.</p> <p>The executives notify the chairperson of the authority of the appointments made.</p>
Northwest Indiana Advisory Board - composition	PPA PA PDP	<p>[13-13-6-1]</p> <p>[13-13-6-2]</p> <p>[13-13-6-5]</p>	<p>The commissioner establishes a Northwest Indiana advisory board to serve the following counties:</p> <p> C a county that has a population of more than 400,000 but less than 700,000; C a county that has a population of more than 107,000 but less than 108,000; and C a county that has a population of more than 125,000 but less than 129,000. </p> <p>The advisory board consists of a member of the senate and the house of representatives if all or part of the member's district is located in a county meeting the requirements. Nine members are appointed by the commissioner from among individuals who reside in the counties for 2 year terms, and who represent various interests in the area.</p> <p>The Board's main role in siting is that it monitors permit application, disseminates information to the public, and makes recommendations to the department of environmental management and the solid waste management board about issues that affect or concern the counties involved in the area.</p>
OTHER AGENCY OR GOVERNMENTAL ENTITY INVOLVEMENT			
No provisions found.			

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COMPATIBILITY OF FACILITY SITE WITH LOCAL SOLID WASTE MANAGEMENT PLANS			
No provisions found.			
IMPACT OF FACILITY ON LOCAL LAND USE			
Certificate of environmental compatibility -- review of impact on county or municipality	PPA PA PDP	<i>[13-22-10-18(b(4))]</i>	In making the review and evaluation on an application for a certificate, the authority considers the impact on the county or municipality in terms of health, safety, cost and consistency with local planning and existing development. To this end, the authority considers local ordinances, permits, or other legal requirements and their potential relationship to the proposed facility.
		<i>[13-22-10-20(b)]</i>	The authority, to the fullest extent practicable, integrates by stipulation the provisions of local ordinances, permits or requirements in making a determination granting a certificate of environmental compatibility.

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PUBLIC PARTICIPATION			
The federal regulations regarding the public participation process for the permitting of hazardous waste (RCRA) facilities can be viewed at http://earth1.epa.gov/epacfr40/chapt-I.info/subch-D/40P0124.pdf within the Part 124 Procedures for Decisionmaking. (State regulations cannot be less stringent than the federal counterparts.)			
NOTIFICATION			
Notification -- completeness of an application for a certificate of environmental compatibility	PPA PA PDP	<i>[13-22-10-14]</i>	<p>Within 30 days of receiving an application for a certificate of environmental compatibility, the director mails written notice to the applicant on whether or not the application is complete. If the application is not complete, the applicant is given a reasonable period in which to complete the application. When a notice is mailed to an applicant that an application is complete, the director immediately notifies all of the following:</p> <ul style="list-style-type: none"> C the statewide members of the authority, C the executive of the county in which the proposed facility is to be located, C the executive of the municipality in which or nearest to which the proposed facility is to be located, C the soil and water conservancy district in which the proposed facility is to be located, and C any planning authority or agency created by state law whose planning duties include the area in which the proposed facility is to be located. <p>The notice includes a description of the procedure used by the authority to review, grant or deny the application for a certificate.</p> <p>In addition, a notice of the receipt of the application for a certificate is published in a newspaper of general circulation in the county and municipality nearest to the proposed facility. The notice must include a map indicating the location of the proposed facility, a description of the procedure to be followed by the authority, and identification of a public place where a copy of the application and accompanying documentation may be reviewed by the public and where copies of the documents may be made.</p>

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Notification -- certificate of environmental compatibility public hearing	PPA PA PDP	<i>[13-22-10-16(a)(4) & (b)]</i>	At least 30 days before the date of the public hearing, the authority arranges for publication of notice of the public hearing in a newspaper of general circulation in the vicinity of the proposed disposal facility. The notice includes: <ul style="list-style-type: none"> C a map indicating the location of the proposed facility, C a description of the procedure to be followed by the authority, C identification of a public place where a copy of the application and the accompanying documentation may be reviewed by the public and where copies of the application and documentation may be made, C the time and place of the public hearing at which the authority will receive public comment and input on the application, and C an indication that written comments from the public will be received by the authority at any time before or during the public hearing.
Notification -- permitting	PA	<i>[13-15-5-1]</i> 329 IAC 3.1-13-10 <i>[13-15-5-3(c) & (d)]</i>	The department follows the federal notification procedures
PUBLIC COMMENTS			
Public comment period -- permits	PA PDP	<i>[13-15-5-1(c)]</i> 329 IAC 3.1-13-10 329 IAC 3.1-13-11 329 IAC 3.1-13-13	The department follows the federal comment period provisions regarding applications for a permit and a draft permit. At the time a permit decision is issued, the commissioner issues a response to comments, responding to all significant comments on the draft permit and explaining the right to request an adjudicatory hearing on the permit. The response to comments is mailed to persons identified through the notification process.
PUBLIC MEETING			
No specific provisions found.			

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PUBLIC HEARINGS			
Public hearing -- application for certificate of environmental compatibility	PPA PA PDP	<i>[13-22-10-17]</i> 323 IAC 1-3-2	<p>A public hearing is held not less than 45 days before the required certificate of environmental compatibility adjudicatory hearing.</p> <p>The authority provides the applicant with copies of all written comments not more than 5 days after receiving them.</p> <p>The authority accepts oral or written testimony at the hearing and written testimony received within 15 days after the hearing.</p> <p>The authority keeps an accurate account and prepares a written transcript of any public hearing held in its review and evaluation of an application for a certificate.</p>
Public hearing -- permits	PA PDP	<i>[13-15-3-3]</i>	<p>A public hearing is held regarding an application for a permit for a hazardous waste disposal facility. The hearing is held at the request of the applicant, the motion of the commissioner, or the filing of a petition requesting a public hearing that is signed by 100 adult individuals who:</p> <ul style="list-style-type: none"> C reside in the county where the proposed facility is to be located, or C own real property within 1 mile of the site of the proposed facility. <p>The department follows the federal procedures for public hearings on draft permits.</p>
ADJUDICATORY HEARINGS			
Adjudicatory hearing on application for certificate of environmental compatibility	PPA PA PDP	<i>[13-22-10-18]</i>	<p>The authority holds an adjudicatory hearing to review and evaluate the impact of the proposed facility on the county and on the municipality in which or near which the facility is to be located.</p> <p>The applicant has the opportunity to respond to any of the written or oral public comments received by the authority regarding the application for a certificate.</p>

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Adjudicatory hearing to appeal of commissioner's actions	PA PDP	<i>[13-19-3-1(2)]</i> <i>[13-15-6-1]</i>	No later than 15 days after receiving the notice regarding a decision to issue or deny a permit application either the permit applicant or any other person aggrieved by the commissioner's action may appeal the action to the solid waste management board and request that the board hold an adjudicatory hearing. No later than 30 days after receiving a valid request, the board assigns the matter for a hearing. The final order of the board on a permit application is subject to judicial review under the conditions of IC 4-21.5-5.
OTHER			
Appeals - certificate of environmental compatibility	PPA PA PDP	323 IAC 1-3-3	Any appeals to a final determination by the hazardous waste facility site approval authority are made under the conditions of IC 4-21.5.

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SITING RESTRICTIONS AND PROHIBITIONS			
Federal siting restrictions and prohibitions can be viewed at http://www.epa.gov/epacfr40/chapt-I.info/subch-I/ by selecting “Part 264 (Updated 1997) - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities”. The regulatory requirements are in Location Standards at 264.18 in the document. (State regulations cannot be less stringent than the federal counterparts.)			
SOIL AND WATER			
Groundwater -- certificate of environmental compatibility	PPA PA PDP	<i>[13-22-10-18(b)(2)]</i>	In making the review and evaluation on an application for a certificate, the authority considers the risk and probable impact of contamination of ground and surface water by leaching and runoff from the proposed facility.
Water quality -- certificate of environmental compatibility	PPA PA PDP	<i>[13-22-10-18(b)(5)(D)]</i>	In making the review and evaluation on an application for a certificate, the authority considers the nature of the probable environmental impact, including the specific predictable adverse effects on water quality.
SEISMIC CONSIDERATIONS			
Seismic risk and placement on a fault	PPA PA PDP	323 IAC 1-2-2(a)(5)(D) or [40 CFR 264.18(a)]	The facility shall not be located within 200 Ft of a fault.
FLOODING AND EROSION			
Restrictions regarding 100-year floodplain	PA	329 IAC 3.1-9-2 or [40 CFR 264.18(b)]	If located in a 100 year floodplain, it has to be demonstrated that it will be able to withstand a flood or they will be able to remove hazardous waste in the event of a flood.
AIR			
Air quality -- certificate of environmental compatibility	PPA PA PDP	<i>[13-22-10-18(b)(5)(D)]</i>	In making the review and evaluation on an application for a certificate, the authority considers the nature of the probable environmental impact, including the specific predictable adverse effects on air quality.

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DISTANCE LIMITATIONS/BUFFER ZONES			
Placement on a fault	PA	40 CFR 264.18(a)	The facility shall not be located within 200 Ft of a fault.
OTHER HUMAN HEALTH CONSIDERATIONS			
Accidents --certificate of environmental compatibility	PPA PA PDP	<i>[13-22-10-18(b)(1)]</i>	In making the review and evaluation on an application for a certificate, the authority considers the risk and probable impact of an accident during transportation of hazardous wastes.
Human health -- certificate of environmental compatibility	PPA PA PDP	<i>[13-22-10-18(b)(5)(B)]</i>	In making the review and evaluation on an application for a certificate, the authority considers the nature of the probable environmental impact, including the specific predictable adverse effects on public health, population density, and safety.
ENVIRONMENTALLY SENSITIVE AREAS			
Consideration for the environment -- certificate of environmental compatibility	PPA PA PDP	<i>[13-22-10-18(b)(5)]</i>	In making the review and evaluation on an application for a certificate, the authority considers the nature of the probable environmental impact, including the specific predictable adverse effects on the natural environment, ecology, and wildlife.
Endangered Species			
Endangered or threatened species -- certificate of environmental compatibility	PPA PA PDP	323 IAC 1-2-2	The application for a certificate includes information evaluating the impact on endangered or threatened species.
Critical Habitats			
No specific provisions found.			
Wetlands			
No provisions found.			

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Wild, Scenic or Recreational Areas			
Scenic, historic, cultural and recreational values -- certificate of environmental compatibility	PPA PA PDP	<i>[13-22-10-18(b)]</i>	In making the review and evaluation on an application for a certificate, the appropriate authority considers the nature of the probable environmental impact, including the specific predictable adverse effects on scenic, historic, cultural, and recreational values.
Approved Farmland Preservation Areas			
Prime agricultural land -- certificate of environmental compatibility	PPA PA PDP	323 IAC 1-2-2	The application for a certificate includes information evaluating the presence of prime agriculture land, as defined by USDA, at the site.
Other			
No provisions found.			
OTHER RESTRICTIONS			
Salt dome formations, salt bed formations, underground mines and caves	PA	[40 CFR 264.18(c)]	Placement of any non-containerized or bulk liquid hazardous waste is prohibited in salt dome formations, salt bed formations, underground mines and caves

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ENVIRONMENTAL JUSTICE CONSIDERATIONS			
No provisions found.			
ECONOMIC CRITERIA			
No provisions found.			
OTHER CRITERIA			
No provisions found.			

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